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July 13, 2001

VIA HAND DELIVERY

Lynda Dorr, Secretary
Public Service Commission of Wisconsin
610 N. Whitney Way
Madison, Wisconsin 53705

Re: Investigation into Ameritech Wisconsin's Unbundled Network
Elements
Docket No. 6720-TI-161

Dear Ms. Dorr:

Enclosed for filing, please find the original and nineteen (19) copies of the Reply Brief of Sprint Communications Company L.P. regarding the above-captioned matter.

Please provide me with a filed-stamped copy in the enclosed self-addressed stamped envelope. Please call me at 913-624-6839 if you have any questions regarding this matter.

Very truly yours,



Kenneth A. Schiffman

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**BEFORE
THE PUBLIC SERVICE COMMISSION OF WISCONSIN**

Investigation into Ameritech Wisconsin's) Docket No. 6720-TI-161
Unbundled Network Elements)

**REPLY BRIEF OF
SPRINT COMMUNICATIONS L.P.**

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Investigation into Ameritech Wisconsin's) Docket No. 6720-TI-161
Unbundled Network Elements)

This proceeding presents the Commission with the opportunity to promote competition for advanced services in residential and small business markets by enabling CLECs to access the local loop controlled by Ameritech. Ameritech's refusal to unbundle fiber/copper loops provisioned over Project Pronto will materially diminish CLECs' ability to offer advanced services in Wisconsin. Sprint established in its Initial Brief that it is technically feasible to unbundle Project Pronto and that this Commission has the authority under applicable Wisconsin and federal law to order Ameritech to unbundle. Feigning that it will not continue with its upgrade of the local loop plant to enable it to deliver advanced services, Ameritech presents the Commission with a potpourri of excuses, complaints, and misguided legal arguments as to why Project Pronto -- *aka* Ameritech's local loop architecture -- should not be available on an unbundled basis. The Commission should ignore Ameritech's pleas and rule that the individual Project Pronto network elements must be available on an

unbundled basis and that the entire Project Pronto loop be declared as a single UNE, or a combination of UNEs, available on end to end basis.¹

In its Initial Brief, Sprint already addressed many of the arguments presented by Ameritech in its Initial Brief. Particularly, Sprint demonstrated in its Initial Brief that CLECs are clearly impaired under the standards of Section 251(d)(2)(B) and Rule 51.317(b) in offering advanced services to consumers if Ameritech does not permit CLECs to access fiber and copper loops. The alternatives offered by Ameritech -- (1) access to a retail broadband offering; (2) use of Ameritech's existing copper loop network; (3) collocation of DSLAMs at the digital loop carrier and leasing of dark fiber; or (4) CLEC self-provision all facilities -- do not cure the material diminution to CLECs' ability to offer advanced services to Wisconsin consumers. Sprint also demonstrated that the four criteria from the FCC's packet switching rule² are satisfied. And even if the Commission finds that one or more of the packet switching criteria are not met, the Commission has the authority to order unbundling of network elements above and beyond what the FCC has done.³

The CLECs unquestionably have demonstrated that Project Pronto must be unbundled. Ameritech witness Flatt conceded that it is technically feasible to do so.⁴ Ameritech unbundles voice services over the Project Pronto network, yet

¹ See Sprint Initial Brief, pp. 14-15 for a list of network elements that should be unbundled.
² 47 CFR § 51.319(c)(3)(B).

³ 47 CFR § 51.317(b)(4); "A state commission must comply with the standards set forth in this § 51.317 when considering whether to require the unbundling of additional network elements."

⁴ Tr. 1212 (Flatt Cross).

refuses to unbundle data services over the virtually identical network elements.⁵ Ameritech must not be permitted to reengineer its local loop plan, making it advanced services compatible, and then prohibit CLECs from using that network on an unbundled basis. Refusal to unbundle Project Pronto guarantees a cable modem/Ameritech DSL duopoly in the advanced services market that will disadvantage Wisconsin consumers. Lack of additional CLEC competition to the advanced services provider mix will lead to less innovation and higher prices for consumers.

Sprint's Initial Brief provided a thorough analysis of the legal and factual bases to unbundle Project Pronto. Consequently, many of the arguments raised by Ameritech in its Initial Brief (like the impair standards from FCC Rule 51.317 and the packet switching criteria from FCC rule 51.319) have already been addressed by Sprint. Nonetheless, Sprint will address some of those issues here again to correct Ameritech's misstatements and faulty legal arguments. Also, Sprint will deal with other arguments raised by Ameritech in its Initial Brief.

The Commission Should Disregard Ameritech's Regulatory Threats and Other Scare Tactics

Before addressing the Argument section that starts on page 158 of Ameritech's Initial Brief, Sprint is compelled to respond to the many misstatements, scare tactics, and hyperbole contained in the first 17 pages of Ameritech's treatment of the Project Pronto unbundling issue.

First, and perhaps most significantly, Ameritech tells the Commission several times that if Ameritech does not get its way (Fiber/Copper Project Pronto

⁵ See Sprint Initial Brief, pp. 10-11; Tr. 122 (Chapman Surrebuttal).

loops are not unbundled) then it will take its ball and go home (Ameritech will not deploy Project Pronto facilities in Wisconsin).⁶ The Commission should take Ameritech's regulatory threats with a large dose of skepticism.

First, Ameritech has never quantified on the record here in Wisconsin the harm that it will accrue if the Commission appropriately unbundles Project Pronto. Realizing that it has no evidence to back up its wild assertions of economic infeasibility, Ameritech regrettably resorts to citing in a footnote dollar amounts from an alleged cost analysis that it presented in its Application for Rehearing of the Illinois line sharing Order in Docket No. 00-0393.⁷ This hardly constitutes evidence of Ameritech's claims of economic infeasibility and is highly improper here. The numbers cited by Ameritech are hotly disputed by the CLECs in the Illinois docket on rehearing and are not even close to having been approved by the Illinois Commission. Ameritech never presented an unbundling cost study in this case. But unfortunately this did not deter Ameritech from presenting these inflated numbers of alleged economic harm here. Given these circumstances, Sprint moves to strike footnote 91 from Ameritech's Initial Brief and the Commission should ignore the numbers in footnote 91. Moreover, the Commission should consider this attempt to backfill the record here with

⁶ Tr. 141; Ameritech Initial Brief, p. 152 ("CLECs' proposals would roadblock that deployment (Project Pronto) ... and that would render such deployment by Ameritech Wisconsin economically infeasible."; p. 155 ("would render Ameritech Wisconsin's planned deployment of Project Pronto DSL facilities economically inviable"); p. 156 (At bottom adoption of the CLECs' proposal likely would keep a choice of broadband technologies out of the hands of many Wisconsin residents by rendering deployment of DSL related Project Pronto facilities economically infeasible in Wisconsin.").

⁷ See page 162, f.n. 91.

unsubstantiated material from the Illinois proceeding and discount significantly Ameritech's unproven claims of economic infeasibility.⁸

These claims of economic infeasibility raise an additional misstatement perpetuated throughout Ameritech's Initial Brief. To support the argument, Ameritech states that its "Project Pronto DSL 'network' does not yet exist and does not have to be built at all."⁹ To the contrary, Ameritech's own witnesses and documents describe that Ameritech has "turned green" many of the Project Pronto remote terminal cites and OCDs and is ready to accept orders for DSL service over these deployed facilities.¹⁰ The evidence shows that Ameritech already has built much of the Project Pronto architecture and it is subject to unbundling now. Ameritech's assertions that Project Pronto deployment has not started and that CLECs cannot unbundle a yet to be built network are deceptive and contradicted by its own Project Pronto expert witness, Sherri Flatt, and March 2001 construction report.

Besides this factual error, Ameritech makes a legal error in its reliance upon economic infeasibility. The 1996 Telecom Act gives ILECs "the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any *technically feasible* point..."¹¹ The FCC definition of

⁸ Moreover, Sprint already addressed in its Initial Brief Ameritech's claims of capacity exhaust and economic infeasibility. Ameritech will be compensated for CLEC use of its network elements, including Project Pronto network elements, by the appropriate application of the TELRIC pricing principles. Sprint Initial Brief, pp. 11-14.

⁹ Ameritech Initial Brief, p. 151; p. 152 ("proposed DSL architecture").

¹⁰ Tr. 1086 (Flatt Direct); Ex. 136, pp. 30-36 (Over 200 NGDLC capable RTs have been installed as of March 2001); See Sprint Initial Brief, p. 17.

¹¹ TA96, Section 251(c)(3) (emphasis added).

“technically feasible” specifically excludes “economic concerns” in determining whether access to unbundled network elements at a point in the network is technically feasible.¹² The FCC specifically excludes claims of economic infeasibility in determining whether network elements should be unbundled.

Consequently, this is not a case of the CLECs wanting to unbundle a hypothetical, futuristic network. Many of the elements are deployed. To frustrate a valid Commission order to unbundle Project Pronto, Ameritech would have to destroy much of the deployment that it already has accomplished. In addition, well-settled FCC rules directly contradict Ameritech’s reliance upon economic infeasibility as a reason not to unbundle Project Pronto.

In addition, the Commission should not believe that Ameritech will not continue its deployment of Project Pronto network elements. One of the primary purposes of Project Pronto is for Ameritech to expand its network to make it data and broadband capable. The FCC in its Project Pronto Order, based on information provided by SBC, stated that the end result of Project Pronto is to “bring fiber closer to homes and businesses, so that DSL services will be available to approximately 80% of SBC’s customers.”¹³ Ameritech’s 2001 Construction Plan, Exhibit 136, is full of examples that Ameritech intends to deploy Project Pronto to enable Ameritech to provision the network of the future. No mention is made that Project Pronto will not be deployed as a result of this

¹² 47 CFR § 51.5.

¹³ Project Pronto Order, CC Docket No. 98-141, FCC 00-336, Released September 8, 2000, ¶ 4.

proceeding.¹⁴ Exhibit 31, a SBC web site document, states that Project Pronto will “dramatically reduce its network cost structure. Expense and capital savings alone are expected to offset the cost of the entire initiative.”¹⁵ The notion that Ameritech will not continue deploying Pronto in Wisconsin is a ruse.

Moving past its threats of limiting Project Pronto deployment if the Commission orders it to be unbundled, Ameritech then puts forth policy arguments related to it being asymmetrically regulated in comparison to cable modem providers.¹⁶ These allegations are a red herring. The status of the advanced services market and regulatory treatment of cable modems have no possible impact on the unbundling analysis that this Commission must perform. The appropriate focus for the impair standard is whether the requesting carrier is materially diminished from providing the “*services it seeks to offer.*”¹⁷ Here Sprint and the other CLECs are seeking to offer DSL services that can provide data and/or voice over the same telephone line. Sprint’s reasons for requesting the unbundling of Project Pronto are that it is materially impaired from offering Sprint ION, a DSL based service. Sprint is not seeking to offer cable modem services. The Commission must disregard Ameritech’s complaints about its level of regulation compared to cable modem providers. The complaints are legally irrelevant.

Ameritech then claims that the CLEC proposals will give data CLECs an “artificial and unfair competitive advantage over other providers of advanced

¹⁴ See Ex. 136, p. 2.

¹⁵ Ex. 31, p. 1.

¹⁶ Ameritech Initial Brief, p. 151, p. 154

services”¹⁸ and coupled with the CLEC proposals for unbundling Project Pronto will lead to less competition. Quite the opposite is true. Clearly, the CLECs in this case have argued for Project Pronto to be unbundled because they intend to use the various Project Pronto network elements. If the Commission does not unbundle Project Pronto, Ameritech will be the only DSL player in town. Unbundling of the monopoly network intuitively leads to more consumer choice; not less.

Moreover, unbundling Project Pronto will not have a detrimental effect on CLEC investment in facilities as alleged by Ameritech.¹⁹ The FCC explicitly recognized the importance of providing CLECs access to unbundled network elements in the UNE Remand Order as a method by which CLECs can build market share to allow for future investment.

We continue to believe that the ability of requesting carriers to use unbundled network elements, including various combinations of unbundled network elements, is integral to achieving Congress’ objective of promoting rapid competition to all consumers in the local telecommunications market.

...

Although Congress did not express explicitly a preference for one particular competitive arrangement, it recognized implicitly that the purchase of unbundled network elements would, at least in some situations, serve as a transitional arrangement until fledgling competitors could develop a customer base and complete the construction of their own networks.²⁰

¹⁷ UNE Remand Order, ¶51 (emphasis added).

¹⁸ Ameritech Initial Brief, p. 154.

¹⁹ Ameritech Initial Brief, p. 155.

²⁰ UNE Remand Order, ¶¶ 5-6.

As the FCC stated, CLECs need unbundled access to the incumbent LEC's network to promote competition in the local telecommunications market and to allow for the investments in their own facilities. Once again, Ameritech is not harmed in unbundling its facilities if CLECs pay appropriate TELRIC rates for their use.

In sum, the Commission must ignore the many factual and legal errors made in the Introduction of Ameritech's treatment of the Project Pronto issues. Contrary to its assertions, Ameritech has provided no evidence that it is economically infeasible to unbundle Project Pronto, and its footnote 91 to the Illinois information must be disregarded. On the contrary, Ameritech is deploying Project Pronto already as proven by Ameritech witnesses at the hearing and in Ameritech documents. Ameritech's future network depends upon Project Pronto. Given the efficiencies it expects to generate, there is no danger that Ameritech will not continue its deployment. Moreover, Ameritech's complaints of asymmetrical regulation in comparison to cable modem provider is legally irrelevant. As an ILEC, Ameritech has the duty to unbundle its network elements at any technically feasible point on terms and conditions that are just and reasonable.²¹ The FCC's unbundling analysis concentrates on the services that the requesting carrier seeks to offer²² -- not an analysis of end users' choices to obtain Internet access. Finally, unbundling of Ameritech's loop network intuitively leads to more competition -- not less competition. With these factual and legal

²¹ TA 96, § 251(c)(3).

²² FCC Rule 51.317(b)(1).

errors corrected, the Commission can now address the arguments in Ameritech's Initial Brief in the appropriate context.

II. CONTRARY TO AMERITECH'S ASSERTIONS, UNBUNDLING PROJECT PRONTO IS SUPPORTED BY FEDERAL LAW, SPECIFICALLY SECTION 706 OF THE 1996 ACT; MOREOVER, FEDERAL LAW ENCOURAGES STATE COMMISSIONS TO UNBUNDLE ADDITIONAL NETWORK ELEMENTS.

Federal law supports the unbundling of advanced services. Contrary to Ameritech's assertions, Section 706 of the 1996 Act does not require state commissions to deregulate ILECs offering advanced services. Sprint demonstrated in its Initial Brief that federal law as interpreted by the FCC and the federal appellate courts supports the notion that the network elements employed for advanced services are subject to the unbundling requirements of section 251(c)(3).²³ The Commission though must pay special attention to Ameritech's distortions of the FCC decision in the Project Pronto Waiver Order.²⁴ Contrary to the conclusion that Ameritech presents to the Commission, the FCC specifically stated that the Order's finding that SBC/Ameritech can own the advanced services equipment, the ADLU cards and the OCD's, is not a finding on whether SBC/Ameritech's offering is compliant with section 251 of the Act.²⁵

First, Ameritech misconstrues Section 706 of the Act. Although Section 706(a) does state that the FCC can promote advanced telecommunications capability by utilizing regulatory forbearance or other regulatory methods that

²³ See Sprint Initial Brief, pp. 16-21. The Commission should note if Ameritech even attempts in its Reply Brief to rebut the conclusive FCC and D.C. Circuit Court precedent cited by Sprint.

remove barriers to infrastructure investment, Ameritech conveniently omitted another method from section 706(a). Specifically, Congress stated that the FCC and state commissions shall encourage the deployment of advanced telecommunications capability by “utilizing, in a manner consistent with the public interest, convenience, and necessity . . . *measures that promote competition in the local telecommunications market.*”²⁶ Consequently, this Commission is mandated by Congress to promote competition in the local telecommunications markets to bring the full benefits of advanced telecommunications services to consumers. The only way to promote competition in the advanced services market in Wisconsin is to unbundle Ameritech’s local loop network used to provision those services.

The FCC recently reiterated Congress’ theme in Section 706(a) that competition in the local telecommunications market is the way to promoting advanced telecommunications capability. In the Line Sharing Order on Reconsideration, the FCC clarified that an Incumbent LEC’s deployment of a fiber and copper loop architecture (i.e. Project Pronto) should not prevent CLEC access to line sharing. The FCC stated:

[W]e find that it would be inconsistent with the intent of the Line Sharing Order and the Statutory goals behind sections 706 and 251 of the 1996 Act to permit the increased deployment of fiber-based networks by

²⁴ Second Memorandum and Order, In the Matter of Ameritech Corp. and SBC Communications, Inc. for Consent and Transfer Control of Licenses, CC Docket No. 98-141, FCC 00-336 (Released September 8, 2000) (“Project Pronto Waiver Order”).

²⁵ Project Pronto Waiver Order, ¶ 9.

²⁶ 1996 Telecom Act, Section 706(a).

incumbent LECs to unduly inhibit the competitive provision of xDSL services.²⁷

Of course, the deployment of Project Pronto is a fiber based network and Ameritech is using it like a sword to prevent competitors from providing xDSL services. Given Congress mandate to use measures that promote local competition and the FCC's recent Order that utilizes such measures, Ameritech's citation to Section 706 to advocate that state commissions cannot impose unbundling obligations on advanced services is flawed. To the contrary, Section 706(a), as interpreted by the FCC, supports the unbundling of fiber based networks like Project Pronto.

Next, Ameritech's improperly cites to the Project Pronto Waiver Order as support that it need not unbundle Project Pronto due to federal preemption.²⁸ This argument is bizarre given the plain language of the Project Pronto Waiver Order. The FCC stated that its findings about the ownership of the line cards and the optical concentration devices are narrowly confined to the ownership of those pieces of equipment in light of the Merger Order and are not a finding on SBC/Ameritech's unbundling obligations. Specifically, the FCC stated:

Nothing in this Order supersedes SBC's obligations to comply with all applicable Commission orders and rules, now and in the future. We stress again that this Order is confined only to the *Merger Conditions*, and so does not constitute any finding or determination with respect to SBC's compliance with section 251 or any other provision of the Act, or SBC's section 251 obligations regarding its Broadband Offering.²⁹

²⁷ Line Sharing Reconsideration Order, ¶ 13.

²⁸ Ameritech Initial Brief, pp. 160-166.

²⁹ In the Matter of the Ameritech and SBC Communications for Consent to Transfer Control of Corporations Holding Commission Licenses, Second Memorandum Opinion and Order, CC Docket 98-141, FCC 00-336, (Released September 8, 2000) ("Project Pronto Waiver Order"), ¶ 9.

Virtually the same admonition is found in paragraph 2 of the same Order where the FCC added that it is “examining issues related to competitive access to remote terminals in the Collocation FNPRM, and [its] decision herein does not prejudice any outcome in that proceeding.”³⁰ Given this explicit language, it is hard to fathom that Ameritech here claims that SBC ILEC ownership of line cards and OCDs is the “FCC’s chosen means to promote Congress’ objectives under the Act, particularly Section 706” and that the CLEC proposal is preempted by the Project Pronto Waiver Order.³¹ Obviously, since the plain language of the Project Pronto Waiver Order states that no decision is being made on SBC/Ameritech’s unbundling obligations for the architecture, there is no established federal law that can preempt the Wisconsin commission on this issue. Ameritech’s long recitation of federal preemption law is pointless. Thus, the FCC’s order permitting the SBC/Ameritech ILECs rather than their advanced services affiliates to own the line cards and OCDs is not a determination that those pieces of equipment or the entire Broadband Offering do not have to be unbundled. In fact, ownership of the advanced services equipment by Ameritech only reinforces the necessity that it has a duty to provide requesting carriers “nondiscriminatory access to its network elements on an unbundled basis.” (TA 96, Section 251(c)(3)). The Project Pronto Waiver Order does not mean that Ameritech is exempted from unbundling the Project Pronto architecture.

³⁰

Id, ¶ 2.

³¹

Ameritech Initial Brief, pp. 161, 163.

Finally, Sprint summarized in its Initial Brief that federal law permits the unbundling of Project Pronto.³² The Illinois Commission in its decision in the Rhythms/Covad and Ameritech arbitration citing the need for speed to market in a competitive environment and in the generic line sharing case³³ recognized that it can and should act on the CLECs' unbundling requests in advance of FCC decisions on these matters. Sprint then cited the FCC decision holding that "because advanced services are telecommunications services, an incumbent LEC (as defined in section 251(h)) must provide nondiscriminatory access to network elements used to provide xDSL-based advanced services consistent with the requirements of section 251(c)(3)."³⁴ The FCC reasoned:

Moreover, neither US West, SBC, nor any other party has explained how exempting xDSL-based advanced services from section 251(c) would further the purposes of this section or the 1996 Act. We find no evidence that Congress intended to eliminate the commission's authority to require access to network elements used to provide advanced services – a result which is at odds with the technology neutral goals of the Act and with Congress' aim to encourage competition in all telecommunications markets.³⁵

Consequently, the FCC, using Congress' directions in section 251(c) has found that the unbundling obligations in section 251(c)(3) apply equally to traditional voice services and xDSL based advanced services. As Sprint set forth

³² Sprint Initial Brief, pp. 16-21.

³³ Arbitration Decision on Rehearing, Covad Communications Company/Rhythms Links, Inc. and Ameritech Illinois, Docket Nos. 00-0312; 00-0313 (February 15, 2001) ("Illinois Arbitration Decision"); Order, Proposed Implementation of High Frequency Portion of Loop/Line Sharing Service, Docket No. 00-0393 (March 14, 2001) (Rehearing Granted) ("Illinois Line Sharing Order").

³⁴ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Remand Order; CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, FCC 99-413, 15 FCC Rcd 385, (Released 12/23/99) ("Remand Order"), ¶ 10.

³⁵ Remand Order, ¶ 12.

in its Initial Brief, when US West appealed the FCC's determination, the D.C. Circuit Court ruled on April 20, 2001 that "we find no error in the Commission's conclusion that it can apply the § 251(c) (unbundling and resale) duties to a firm that met the § 251(h) criteria on February 8, 1996 (definition of ILEC) *and* is still providing 'exchange access' or 'telephone exchange service.'"³⁶ This is conclusive. Unbundling obligations for ILECs apply to all telecommunications services, including advanced services.³⁷

III. SPRINT DEMONSTRATED THAT THE PACKET SWITCHING ELEMENTS OF PROJECT PRONTO SHOULD BE UNBUNDLED

Ameritech's primary argument why Project Pronto should not be unbundled is that it contains packet switching and the four conditions from the FCC's packet switching rule 51.319(c)(3)(B) are not met.³⁸ Sprint addressed this argument in its Initial Brief and demonstrated that the packet switching criteria from the FCC rule are satisfied.³⁹ Moreover, even if it is found that one or more of the FCC packet switching criteria are not met at a particular location or in general, this Commission has the authority - from the FCC and in state law - to unbundle network elements beyond the FCC's current list of UNEs if the impair test from FCC Rule 51.317(b) is satisfied.⁴⁰ Sprint proved in its Initial Brief and

³⁶ WorldCom, Inc. v. FCC, at *12.

³⁷ See Sprint Initial Brief pp., 18-21 for additional FCC authority that permits state commissions to order unbundling over and above what the FCC has done (Rule 51.317(d)) and the clarification in the Line Sharing Reconsideration Order that line sharing applies to the entire loop even where the incumbent has deployed fiber in the loop (e.g. where the loop is served by a remote terminal).

³⁸ See Ameritech Initial Brief, pp. 166-172.

³⁹ See Sprint Initial Brief, pp. 37-46.

⁴⁰ 47 CFR § 51.317(b)(4); W.S.A. §§ 196.219(f) and 196.03(6). The FCC specifically opened the door for CLECs to prove that lack of access to packet switching impairs their ability to offer advanced services in Paragraph 312 of the UNE Remand Order. The FCC stated: "We

provides additional discussion below that is impaired in offering the services that seeks to offer without access to the Project Pronto unbundled network elements.

Sprint will respond to Ameritech's misguided arguments on the specific packet switching criteria. As the Illinois Commission found in the Illinois Arbitration Order, this Commission should find that the "the evidence demonstrates that all four criteria are satisfied and it is permissible to make the OCD (ATM switch) available as a UNE."⁴¹

The FCC rule states that packet switching must be provided as a UNE if the following conditions are met:

- (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);
- (ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;
- (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); and
- (iv) The incumbent LEC has deployed packet switching capability for its own use.⁴²

note, however, that (CLECs) are free to demonstrate to a state commission that lack of access to the incumbent's frame relay network element impairs their ability to provide the services they seek to offer. A state commission is empowered to require incumbent LECs to unbundle specific network elements used to provide frame relay service, consistent with the principles set forth in this order."

⁴¹ Illinois Arbitration Order, p. 32.

⁴² 47 CFR §51.319(c)(3)(B).

Sprint examined each of the four conditions in its Initial Brief and provided sufficient evidence on how each is satisfied. Sprint will respond here to the specific arguments raised by Ameritech.

A. Deployment Of Digital Loop Carrier Systems

Ameritech argues that this condition is not met because Project Pronto allegedly is an overlay network and no copper facilities are being replaced. Ameritech is wrong in two respects. First, it wholly ignores the beginning part of the rule before the “or.” In that section, the only issue is whether Ameritech has deployed digital loop carrier systems. There is no question that Ameritech is deploying Next Generation Digital Loop Carriers throughout its Wisconsin network. Sprint’s Initial Brief provided cites to this non-disputed fact.⁴³ Those facts alone are sufficient to satisfy this condition since the rule uses the disjunctive “or.” Nonetheless, the evidence also shows that Ameritech will be replacing much of the copper in its network. Exhibit 32, the Investor Briefing released by SBC/Ameritech when it announced Project Pronto belies Ameritech’s claims in several places. First, on page 6, SBC stated that , “one-fourth of the \$1.8 billion targeted for network efficiency initiatives will be dedicated to **upgrading a significant number of locations currently served via copper-based DS1s to new, lower cost fiber facilities.** Another 25 percent will be targeted for **moving existing voice lines to new fiber-fed remotes.**”⁴⁴ Moreover, SBC claimed that its “**broad deployment of fiber and related**

⁴³ Sprint Initial Brief, p. 40.

⁴⁴ Ex. 32, pp. 6-7, (emphasis added).

electronics will substantially eliminate further deployment of copper facilities for feeder reinforcement.”⁴⁵ Ameritech witness Flatt, Ameritech’s Project Pronto expert in the case, confirmed this as her understanding of Ameritech’s Project Pronto deployment.⁴⁶ Undoubtedly, whether under the portion of the rule before the “or” or after it, the FCC’s first criteria of the packet switching rule has been satisfied.

B. No Spare Copper Loops Capable Of Supporting The xDSL Services That The CLEC Seeks To Offer

The second FCC condition states that there is no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer. Ameritech contends that this condition is not met because the CLECs have not presented specific evidence where spare copper loops have been unavailable. Ameritech’s narrow view of this condition makes it inoperable. Sprint demonstrated in its Initial Brief that SBC/Ameritech’s stated purpose for deploying Project Pronto is to reduce loop lengths so that xDSL services will be available to a much large portion of the customer base. In addition to the citations provided by Sprint in its Initial Brief, the SBC Investor Briefing, Ex. 32 states that “[t]he investments in fiber feeder and next-generation remote terminals are designed to eliminate loop length and network condition limitations, allowing SBC to meet the ultimate objective of bringing broadband capability to substantially all of its customers.”⁴⁷ The logical corollary to this is that the existing copper loop network is not available to provide xDSL services because

⁴⁵ Ex. 32, p. 7 (emphasis added).

⁴⁶ Tr. 1185 (Flatt Cross).

of excessive loop lengths and other network conditions. The UNE Remand Order provides some additional insight. It states that requesting carriers are impaired without access to packet switching in the situation where it is unable to “obtain spare copper loops necessary to offer the same level of quality for advanced services” that the ILEC can.⁴⁸ Sprint demonstrated in its Initial Brief that use by the CLECs of the existing copper loop network is disadvantageous for several reasons including that the CLECs’ service would be more costly (would have to pay for conditioning charges over 12,000 feet) and the CLECs could not match the data delivery rate of Ameritech’s product because loop lengths impact speed of data delivery.⁴⁹

As Sprint stated in its Initial Brief, the Commission should not analyze copper loop availability on a customer by customer basis. The Illinois Commission declined to do so.⁵⁰ Moreover, analysis of copper loop availability on a loop by loop basis leads to absurd results. The FCC realized the administrative nightmare that would produce. It stated in the UNE Remand Order “[w]e also agree with the commenters that point out that we cannot evaluate the needs of every potential entrant for every network element on a carrier-by-carrier, market-by-market, week-by-week (or other time period) basis.”⁵¹ The FCC further commented on the impracticality of this approach by stating that a wire center by wire center approach to the unbundling analysis would create uncertainty in the

⁴⁷ Ex. 32, p. 8.

⁴⁸ UNE Remand Order, ¶ 313.

⁴⁹ Sprint Initial Brief, p. 36.

⁵⁰ Illinois Arbitration Decision, p. 32.

⁵¹ UNE Remand Order, ¶ 65.

market and would consume enormous amounts of resources and time, “thereby undermining the goal of Act to bring the benefits of rapid competition to all consumers.”⁵² CLECs would be spending more time litigating than serving customers and scarce state commission resources would be exhausted. The FCC's second requirement of the packet switching rule has been satisfied.

C. The ILEC Has Not Permitted The CLEC To Collocate A DSLAM Nor Has The CLEC Obtained A Virtual Collocation Arrangement At A Subloop Access Point

The third FCC condition is when the ILEC has not permitted the requesting carrier to deploy a DSLAM in the remote terminal or other interconnection point or the requesting carrier has not obtained a virtual collocation arrangement at subloop interconnection points. Ameritech again argues that this condition is unsatisfied because an analysis must be done on a case-by case basis. As quoted above, the FCC acknowledges the administrative nightmares that would cause and has said it will not engage in such an analysis. Moreover, the FCC states that an ILEC is relieved of unbundling packet switching only “if it permits a requesting carrier to collocate its DSLAM in the incumbent’s remote terminal, on the same terms and conditions that apply to its own DSLAM.”⁵³ Sprint’s Initial Brief demonstrated that Ameritech will not let CLECs collocate plug-in cards at the remote terminal in the same manner that Ameritech does, which serves as the functional equivalent of a DSLAM.⁵⁴ Ameritech witness Ms. Flatt confirmed that it is technically feasible for a CLEC to virtually

⁵² Id. ¶ 142.

⁵³ UNE Remand Order, ¶ 313.

⁵⁴ Tr. 1139 (Flatt Surrebuttal); See Sprint Initial Brief, pp. 42-44.

collocate a line card and serve customers as long as the plug-in card works with the NGDLC equipment.⁵⁵ The third criterion is satisfied. CLECs cannot collocate plug-in cards at the remote terminal on the same conditions that Ameritech does nor can it obtain subloop access at the NGDLC.⁵⁶

D. The ILEC Has Deployed Packet Switching For Its Own Use

The fourth and final FCC condition is that the ILEC deploy packet switching for its own use. Ameritech asserts that this condition is not met because its affiliate will be providing the advanced services and not Ameritech Wisconsin. First of all, this is a distinction without a difference. The evidence is overwhelming that SBC/Ameritech will be using the packet switching deployed in its network for its own use. The Investor Briefing, Exhibit 32, is rife with examples of the efficiencies, expense savings, capital savings, and revenue opportunities presented to the SBC ILECs, which would include Ameritech Wisconsin, from the deployment of Project Pronto.⁵⁷

Moreover, Ameritech's plans contained in its documents indicate that it is migrating its voice network from a circuit switched to a packet switched network.⁵⁸ Undoubtedly, Ameritech is now and will continue in the future to use the packet switching capabilities in Project Pronto for its own use.

⁵⁵ Tr. 1211-1212 (Flatt Cross).

⁵⁶ UNE Remand Order, ¶ 313; See, Sprint Initial Brief (pp. 42-44) for citation to the Illinois' Commission decision on this issue and details of the problems and expenses of collocating DSLAMs that are not plug-in cards at the remote terminal.

⁵⁷ Ex. 32, pp. 6-9. Sprint's Initial Brief (pp. 44-45) contains more citations and information regarding this criteria.

⁵⁸ Ex. 32, p. 6; Ex. 136, p. 2.

Finally, Ameritech ignores the implications of the D.C. Circuit Court's decision in *ASCENT v. FCC*.⁵⁹ There the Court said that the FCC erred in permitting ILECs to evade their Section 251(c) unbundling obligations by transferring advance service provisioning to its affiliate.⁶⁰ The Court reasoned,

The Act's structure renders implausible the notion that a wholly owned affiliate, providing telecommunications services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent, should be presumed to be exempted from the duties of that ILEC parent.⁶¹

While the D.C. Circuit Court ruled over six months ago now, Ameritech still has not acknowledged that it cannot evade its unbundling obligations through the use of an advanced services affiliate. The fiction must end. Ameritech will use the packet switching elements of Project Pronto with or without the existence of the advanced services affiliate. And if Ameritech follows the D.C. Circuit Court decision, it must eliminate its affiliate or subject it to the unbundling obligations of the Act.

Without question Sprint has established that the FCC's packet switching criteria are satisfied. Ameritech must be ordered to unbundle Project Pronto on this basis alone.

⁵⁹ *ASCENT v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

⁶⁰ *Id.* at 668.

⁶¹ *Id.*

IV. EVEN IF THE COMMISSION DETERMINES THAT ONE OR MORE OF THE PACKET SWITCHING CRITERIA ARE NOT SATISFIED, SPRINT HAS DEMONSTRATED THAT IT IS IMPAIRED WITHOUT ACCESS TO PROJECT PRONTO

A. It Is Technically Feasible To Unbundle Project Pronto

Ameritech wrongly contends that it is not technically possible to unbundle Project Pronto citing such alleged technical reasons that DSL service provisioned over Project Pronto does not occupy a distinct, physical end to end path and does not have consistent interfaces at each end of the path.⁶² So what. These are not technical reasons for not unbundling Project Pronto. They are regulatory/legal creatures that have no bearing on whether a CLEC can obtain DSL service from Ameritech over its Project Pronto network.

No state or federal order requires network elements to have the characteristics described by Ameritech to be unbundled. In fact, a loop is defined by the FCC as “a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point an end-user customer premises, including inside wire owned by the incumbent LEC.” (FCC Rule 51.319(a)). No distinctions are made by the FCC in the loop definition for consistent end to end paths and interfaces. It is technically feasible for Ameritech to offer Project Pronto an unbundled basis.

As Sprint has pointed out in this brief and in its Initial Brief, Ameritech’s Project Pronto expert, Sherri Flatt, admitted that it is technically feasible to

⁶² Ameritech Initial Brief, p. 172. Ameritech also presents a chicken and egg scenario saying that it cannot unbundle network elements not deployed based on its mischaracterization that it has not deployed Project Pronto. As described above, Ameritech has deployed much of its Project Pronto network already in Wisconsin. Ameritech’s word game fails.

unbundle the architecture. For more context, below are Ms. Platt's statements on cross examination.

Q. Is it not feasible for a CLEC to give SBC Ameritech a line card that SBC Ameritech has told the CLEC works with its NGDLC equipment and for a CLEC to serve customers in that manner?

A. Well, No. 1, like you said, it's based on compatibility, you know, if the NGDLC line card –

Q. It's a simple yes or no question. Is it technically feasible or not?

A. It's not a simple yes or no question in my opinion. My opinion is that there are several factors to be considered in that. If the line card were compatible, if it were an Alcatel line card, it were compatible with our equipment. And depending on exactly how you wanted to use it, there are a lot of variables there. But there still is going to be lots of capacity in that card going to waste no matter – if you own that card and you don't fully utilize the card.

Q. Hey, I've got a lot of customers, I'm going to fully utilize that card.

A. Okay.

Q. **So it's technically feasible, right, given the qualifications you made in your answer?**

A. **Sure.**⁶³

This exchange highlights that it is technically feasible for CLECs to provide DSL service over the Project Pronto architecture if the CLEC ensures that the plug-in card that it is virtually collocating is compatible with the Alcatel equipment deployed by Ameritech. Make no mistake, Sprint and the other CLECs are not seeking to introduce equipment into Ameritech's network that does not work or obtain a particular functionality that does not exist. That would be fallacy. But where equipment exists manufactured by or licensed by Ameritech's vendor or where a particular transport Quality of Service is available that can differentiate the CLEC services from the Ameritech DSL offering, then CLECs should have the ability to use that equipment or deploy that quality of service on an unbundled basis. As Sprint suggested in its Initial Brief, any capacity issues from virtual

collocation of plug-in cards or reservation of capacity are taken care of in appropriately developed TELRIC rates.⁶⁴ Sticking to Ameritech's offering alone will not allow CLECs to compete effectively.

B. Sprint Established That It Is Impaired Within The Meaning Of FCC Rule 51.317(b) If It Is Refused Access To Project Pronto

If the Commission determines that one or more of the packet switching criteria are not met (which it should not as set forth above), then it has the authority to order Ameritech to unbundle the Project Pronto network elements if it determines that lack of access to the network element(s) impairs a carrier's ability to offer the services it seeks to offer.⁶⁵ Sprint detailed in its Initial Brief the specific elements of the Project Pronto network that must be unbundled.⁶⁶

Ameritech claims that the CLECs cannot be impaired without access to Project Pronto because it is an additional option for CLECs to provide xDSL service.⁶⁷ Ameritech mischaracterizes the record and the law. First as demonstrated above, Ameritech's own documents describe how fiber will be replacing the copper deployed in its network.⁶⁸ Moreover, Ameritech is permitted under the Project Pronto Waiver Order to reduce its current copper deployment by 5% in the next two years and has no restriction on retiring copper after September, 2003.⁶⁹ Consequently, the deployment of Project Pronto does not leave CLECs with the status quo. It is not just an overlay network. SBC

⁶³ Tr. 1211-1212 (Flatt Cross) (emphasis added).
⁶⁴ Sprint Initial Brief, pp. 11-14.
⁶⁵ FCC Rule 51.317(b)(1).
⁶⁶ Sprint Initial Brief, pp. 14-16.
⁶⁷ Ameritech Initial Brief, p. 180.
⁶⁸ Ex. 32, pp. 6-7.
⁶⁹ Project Pronto Waiver Order, ¶ 39.

announced that it plans to invest \$4.5 billion in its loop network to extend the broadband capacity to more than 80 percent of its customer base region wide.⁷⁰ One of the primary benefits of this huge investment is the efficiencies gained by Ameritech from deploying fiber instead of copper. In fact, SBC expects to realize annual savings of \$1.5 billion by 2004 as a result of the loop and other infrastructure improvements it is making.⁷¹ Put in this perspective, it is clear that the Project Pronto network is not an overlay; it is a reengineering of Ameritech's existing network. Ameritech simply cannot obtain its claimed efficiencies if it does not migrate the old network to the new network.

Ameritech next claims that the CLECs are not impaired because of the alternatives offered by Ameritech.⁷² Using the factors set forth in the FCC rule, it is clear that the alternatives proffered by Ameritech to unbundling Project Pronto do not prevent CLECs' ability to offer advanced services from being materially diminished. (Rule 51.317(b)(1)). Ameritech cites four alternatives for CLECs.

- CLECs may utilize the retail Broadband Service Offering
- CLECs may use the existing copper network
- CLECs may collocate their own DSLAMs and lease Dark Fiber
- CLECs may build their own facilities.

Ameritech further claims that the CLECs simply "don't like the other options available for providing DSL service."⁷³ Yes, Sprint and the other CLECs do not like the options offered to them by Ameritech. The reason for the dislike is completely rational and has a sound basis in the law. CLECs are impaired from

⁷⁰ Ex. 32, p.4.

⁷¹ Ex. 32, p.2.

⁷² Ameritech Initial Brief, p. 181.

⁷³ Ameritech Initial Brief, p. 184.

offering the services they seek to offer without access to the Project Pronto network elements. This is the standard from FCC Rule 51.317(b)(1) that must be applied.

Ameritech complains that the CLECs are not examining the totality of the circumstance as they exist today and thus are not truly impaired.⁷⁴ The sad truth of the circumstances today, however, is that Ameritech has updated its loop network, engineered it only for the advanced services that it wants to provide, and told the CLECs that they can try to compete with the monopoly provider with well over 90% market share by: (1) offering identical services (the Broadband Service) to Ameritech; (2) spending unknown amounts of money and taking an unknown amount of months to collocate a DSLAM for a very small potential customer base (just for one Remote Terminal out of 4 to 6 RTs that typically subtend a Central Office); (3) using, if available, the outdated, soon to be replaced copper loops that afford slower speeds for advanced services and where the CLEC might have to pay conditioning charges to clear interferors that Ameritech or its affiliate will not have to pay given the shorter loop lengths of the Project Pronto loops, or (4) attempt to replicate Ameritech's ubiquitous network by building its own outside loop plant. These are just some of the totality of the circumstances that CLECs are faced with when trying to offer the services that they seek to provide. Sprint demonstrated in extensive detail in its Initial Brief that CLECs are impaired without access to the Project Pronto unbundled network elements and thus has already addressed many of the impair arguments in

⁷⁴ Ameritech Initial Brief, p. 184.

Ameritech's brief.⁷⁵ Sprint also set forth in its Initial Brief the factors from FCC Rule 51.317(b)(2) and (3) most implicated by the Ameritech alternatives to unbundling the Project Pronto network. The table below summarizes the reasons why the Ameritech alternatives to unbundling are inadequate and analyzes the factors from the FCC rule to demonstrate the impair argument.

Ameritech Alternative	Reasons Why Project Pronto Must Be Unbundled	Rule 51.317(b)(2) and (3) Factors Implicated
CLECs may utilize the retail Broadband Service Offering	<ul style="list-style-type: none"> • UNE Remand Order holds that the availability of a retail offering does not relieve the ILEC from unbundling the elements of the retail offering. Otherwise, ILECs could make all of their products available only as a retail offering to avoid their unbundling obligations.⁷⁶ • The Broadband Agreement by its own terms can be modified or unilaterally withdrawn by Ameritech and is not subject to Commission authority or approval.⁷⁷ • CLECs will not be able to differentiate their broadband offering from that of AADS.⁷⁸ 	<ul style="list-style-type: none"> • Certainty -- The Broadband Agreement can be withdrawn or modified unilaterally at any time. • Quality -- CLECs services will be all unspecified bit rate data delivery until Ameritech determines that it is ready to provide a committed bit rate product. CLECs could bring different products with specified bit rates to the market if Project Pronto is unbundled. • Promotion of Innovative Services -- Same as above. • Impact On Network Operation -- The Broadband Service as it is configured will not permit Sprint to offer the service that it seeks to offer.
CLECs may use the existing copper network	<ul style="list-style-type: none"> • Existing copper network limits the numbers of customers that can obtain advanced services by over 20 million in SBC territory.⁷⁹ 	<ul style="list-style-type: none"> • Ubiquity -- Clearly, CLECs will not have the

⁷⁵ Sprint Initial Brief, pp. 23-37.

⁷⁶ UNE Remand Order, ¶ 67; Sprint Initial Brief, pp. 28-29..

⁷⁷ Sprint Initial Brief, pp. 29-30. Ameritech claims that it would not be logical for it to withdraw the Broadband Service. Ameritech Initial Brief, pp. 186-187. While Ameritech says now it will not withdraw the BBS Agreement, nonetheless the escape clause exists in the contract.

⁷⁸ Sprint Initial Brief, pp. 30-31. Ameritech's claims that the Project Pronto Waiver Order gives CLECs many different options for the BBS are specious. The only item that can be differentiated is that the CLEC may select preferred upload and download speeds which are not even guaranteed given the Unspecified Bit Rate Quality of Service.

	<ul style="list-style-type: none"> • Most of the remaining copper loops that are not Project Pronto loops will be over 12,000 feet in length and are subject to conditioning charges while Project Pronto loops are not.⁸⁰ • Project Pronto loops are all less than 12,000 feet and capable of transmitting data at speeds much greater than non-Project Pronto loops that exceed 12,000 feet.⁸¹ • It makes no sense for Ameritech to maintain dual loop networks, especially given the projected efficiencies it cites in Ex. 32. The existing copper network may be retired by Ameritech after 2003.⁸² 	<p>same ubiquitous reach to provide advanced services, given that extending the reach of advanced services is one of the primary reasons for deploying.</p> <ul style="list-style-type: none"> • Cost – CLEC will have to pay conditioning charges not paid by Ameritech. • Quality – CLEC data transmission speeds will be slower due to loop length limitations for existing copper loops. • Certainty – Copper loops may be retired at any time.
CLECs may collocate their own DSLAMs and lease Dark Fiber	<ul style="list-style-type: none"> • The FCC found that collocation by CLECs at RTs is costly, time consuming and often unavailable.⁸³ • Difficulties in collocating at a RT include space considerations, availability of dark fiber, and completing an engineered controlled splice. All of these processes involve individual case basis pricing and/or time frames for completion that add uncertainty and costs for the CLECs.⁸⁴ • Based on Sprint's experience in collocating a DSLAM at an RT in Kansas, it could take Sprint more than \$22 Million to collocate only at the currently installed RTs.⁸⁵ 	<ul style="list-style-type: none"> • Cost – Costs to collocate DSLAMs at multiple RT locations are extensive. • Timeliness – Contrary to Ameritech's claims,⁸⁶ Sprint presented evidence that its experience for DSLAM collocation ranges much more than the 6 months cited by Ameritech. • Ubiquity – Given the excessive costs for collocating a DSLAM, it would be economically impossible for a CLEC to compete with Ameritech's offering. • Certainty – The ICB pricing and uncertain time frames for obtaining a collocation, dark fiber and engineered control splices needed complete this arrangement cause CLECs a great deal of uncertainty.

⁷⁹ Sprint Initial Brief, p. 35.

⁸⁰ Sprint Initial Brief, p. 36.

⁸¹ Sprint Initial Brief, p. 36.

⁸² Sprint Initial Brief, pp. 36-37.

⁸³ Line Sharing Reconsideration Order, ¶ 13. This Order, released more than a year after the UNE Remand Order, reflects the FCC's experience in seeing collocation, or more aptly, the lack thereof at RTs. Ameritech's citations to the UNE Remand Order on this topic thus are outdated and stale. See Ameritech Initial Brief, p. 188.

CLECs may build their own facilities.	<ul style="list-style-type: none"> • It is economically impossible for CLECs to duplicate the network infrastructure to serve customers. That is why the Act requires unbundling of network elements. 	<ul style="list-style-type: none"> • Cost • Ubiquity • Timeliness
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Taking the Ameritech alternatives either alone or together, CLECs are still impaired in providing advanced services if not given unbundled access to Project Pronto. Through the table above and in its Initial Brief, Sprint has addressed all of Ameritech's misguided application of the factors from Rule 51.317(b)(2). Ameritech then argues that the Rapid Introduction of Competition factor from the list of factors that the FCC may consider in its unbundling analysis (51.317(b)(3)) tilts in its favor because the FCC approved its application to waive certain of the merger conditions and allow the SBC ILECs to own the plug-in cards and OCDs. Ameritech is wrong. As set forth above, the FCC explicitly stated that it was only waiving certain merger conditions and that it in no way was ruling on the unbundling obligations of the SBC ILECs.⁸⁷ Moreover, while Ameritech claims that it is making the Broadband Service as appealing as possible to its CLEC customers,⁸⁸ the only CLEC that appears to want it is Ameritech's affiliate, AADS. Ameritech witnesses could not identify any CLEC other than AADS who has signed the Broadband Service Agreement.⁸⁹ Consequently, competition is not promoted by accepting Ameritech's alternatives to unbundling Project Pronto.

⁸⁴ Sprint Initial Brief, pp.33-34. Moreover, the Commission should ignore the claims made by Ameritech that the Project Pronto commitments will allow for collocation space at the RTs. The meager space commitments will not allow for more than a couple of CLECs to collocate, if that many, at a specific RT.

⁸⁵ Id. p. 34.

⁸⁶ Ameritech Initial Brief, p. 192.

⁸⁷ Project Pronto Waiver Order, ¶ 9.

⁸⁸ Ameritech Initial Brief, p. 199.

⁸⁹ Tr. 151 (Chapman Cross).

Quite the opposite is true, unbundling Project Pronto will permit CLECs to pay cost based rates and quickly get to the marketplace innovative advanced services products.

V. AMERITECH'S CITATION TO SECTION 261(C) OF THE ACT IS MEANINGLESS

Accepting its fate that an analysis under rule 51.317(b) mandates unbundling of Project Pronto, Ameritech turns to “plan B” to use Section 261(c) from the Act to convince this Commission that it should not unbundle Project Pronto and to introduce more meaningless information about the status of the advanced services market. The statute provides that nothing in the Act “precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition...” (TA 96, Section 261(c)). Ameritech claims **without citation to any relevant case or FCC Order** that the requirements of 261(c) “are mandatory, and are incremental to the requirements of Sections 251(d)(2) and 251(c)(6).”⁹⁰ Of course, Ameritech cannot come up with a relevant citation to support its proposition. None exists. The citations provided by Ameritech concern the “necessary” requirement from section 251 and a wholly irrelevant Illinois statute.⁹¹ In determining whether certain elements should be unbundled in the UNE Remand Order, the FCC never mentions Section 261(c) of the Act. That 261(c) does not apply in determining whether unbundling is appropriate is confirmed in the original Iowa Utilities Board decision at the Eighth Circuit. There the Court said, “[W]e believe that this

⁹⁰ Ameritech Initial Brief, p. 202.

⁹¹ Ameritech Initial Brief, p. 202.

provision (261(c)) applies only to those additional state requirements that are not promulgated pursuant to section 251 or any other section in part II of the Act.”⁹²

The Commission should dismiss Ameritech’s citation to Section 261(c).

VI. VIRTUAL COLLOCATION OF CLEC PLUG-IN CARDS IN AMERITECH NGDLCs IS LAWFUL AND WILL SPARK INNOVATION AND COMPETITION

To effectuate the unbundling of the various elements of Project Pronto, Ameritech must permit CLECs on a non-discriminatory basis to virtually collocate plug-in cards in Ameritech’s NGDLC equipment. Virtual collocation allows for the CLECs to designate a plug-in card that is installed and maintained by Ameritech. Moreover, the CLECs are only seeking to have cards placed in the NGDLC that either are manufactured by or licensed by Ameritech’s vendors. These qualifications to the collocation of plug-in card issue address many, if not all of Ameritech’s operational issues.

Ameritech further argues that line cards cannot be collocated because they are not used to access UNEs and are not a “piece of equipment.”⁹³ Sprint already dispensed of these arguments in its Initial Brief.⁹⁴ Briefly, Ameritech’s contention that a line card is not a piece of “equipment” because it cannot function on a standalone basis must be dismissed. It is hard to imagine any component of a telecommunications network that would satisfy this definition of “equipment” — each piece-part is dependent on connections to other piece-parts in order to perform its intended function. Moreover, over the objection of SBC,

⁹² Iowa Utilities Bd. v. FCC, 120 F.3d 753, 907 (8th Cir. 1997) (subsequent history omitted).
⁹³ Ameritech Initial Brief, p. 208-218.

the FCC concluded that the ADLU cards “should be classified as Advanced Services Equipment . . .” (Project Pronto Waiver Order, ¶ 14). Besides being advanced services equipment, the ADLU cards are used to access UNEs.

Of course, under Ameritech's view that the subloop elements of Project Pronto are not UNEs, plug-in cards will not be able to access UNEs. But if the Commission rightly finds that Project Pronto sub-elements are UNEs, then the line card unquestionably will be used to access UNEs. That it must work with other components in the NGDLC to do so is inconsequential. Surely, Congress did not intend for its collocation requirements to be interpreted so narrowly that it renders the statute meaningless. At bottom, the plug-in card is a piece of equipment eligible for collocation and when placed in the NGDLC is used to access unbundled network elements.

Ameritech also presents a faulty legal argument that the CLECs' proposal would require it to construct a superior network in violation of the Iowa Utilities Board line of cases.⁹⁵ The CLECs are not asking Ameritech to create a superior network. CLECs merely want access on an unbundled basis to the loop network that Ameritech has built and is building. That CLECs may want to virtually collocate a plug-in card that differs in functionality from the Ameritech ADLU card is not asking Ameritech to construct a superior network. It is asking Ameritech to utilize the equipment that it has deployed in conjunction with a technically

⁹⁴ Sprint Initial Brief, pp. 47-49/

⁹⁵ Ameritech Initial Brief, p. 205. Ameritech errors in describing that the CLECs want TDM circuits. Mr. Starkey in his surrebuttal testimony acknowledged that the CLECs are not asking for Quality of Services or elements that Ameritech cannot deploy. See Sprint Brief, p. 15, f.n. 39; Tr. 3237.

feasible plug-in card manufactured by or licensed by Ameritech's NGDLC vendor to allow CLECs to bring additional choice to the advanced services marketplace. Without the ability to differentiate services by using different plug-in cards, the advanced services marketplace will revert back to the old AT&T monopoly where a consumer could get any type of telephone as long as it was rotary dial and black in color.

VII. THE CLECS' PROJECT PRONTO UNBUNDLING REQUESTS WILL NOT LEAD TO THE PARADE OF HORRIBLES PRESENTED BY AMERITECH

Ameritech wrongly claims that the CLEC unbundling proposals will lead to operational problems for Ameritech's network. Ameritech mischaracterizes the CLEC requests and the CLECs have proven that Ameritech's network will benefit, not suffer, as a result of the unbundling.

First, as explained above, the CLECs are not asking Ameritech to install line cards that are not manufactured or licensed by Ameritech's vendor, Alcatel.⁹⁶ CLECs merely want the opportunity to use line cards manufactured or licensed by Alcatel that Ameritech, if left to its own devices, would not install. An example is helpful. To date, Ameritech is only installing ADLU cards with unspecified bit rate (UBR) quality of service. Sprint or another CLEC may want to take advantage of a HDSL card that is manufactured by or licensed by Alcatel to provide a higher bit rate type of service. The HDSL card is technically feasible to be deployed, but Ameritech would not deploy it but for the virtual collocation request of the CLEC. Ameritech's claims that CLECs seek to deploy

⁹⁶ See Ameritech Initial Brief, p. 219.

incompatible line cards are baseless. Thus, the operational issues cited by Ameritech are non-existent.

Next, Ameritech claims that the CLEC proposals will physically exhaust the NGDLC system. Sprint addressed these claims in its Initial Brief already.⁹⁷ With respect to Ameritech's arguments that CLECs will underutilize the line card port capacity, Sprint submits two responses. First, CLECs stated that they will pay Ameritech appropriate TELRIC rates for all capacity utilized on the line cards. Second, there is absolutely no reason why CLECs will want to inefficiently use capacity that they are already paying for. Given that a CLEC will pay for port capacity, the CLEC has an incentive, like Ameritech does, to win a customer to utilize that capacity.

Ameritech's bandwidth exhaust claims must be ignored too. As Sprint suggested in its Initial Brief, there is no reason for a CLEC to reserve and pay for an enormous amount of capacity that it will not or cannot sell to paying customers. Here again appropriate TELRIC rates will ensure that CLECs will pay for the capacity that they use.⁹⁸

Moreover, Ameritech's discussion regarding the different quality of service classes and its plans to deploy only the UBR quality of service illustrates why it is necessary to grant the CLEC request and unbundle Project Pronto.⁹⁹ Without unbundling, Wisconsin consumer will only be able to obtain one flavor of DSL Internet access. With unbundling, CLECs will be able to present innovative new

⁹⁷ Sprint Initial Brief, pp. 11-14.

⁹⁸ Id.

⁹⁹ Ameritech Initial Brief, p. 223.

products to the market that differ from Ameritech's vision. To the extent that the marketplace desires the products offered by the CLECs that use more bandwidth than the Ameritech products, that is a good thing, not bad. Like it does with its current transport network Ameritech will be paid TELRIC rates for any additional transport that it deploys to service this emerging market. In sum, Ameritech's capacity exhaust claims are factually and legally wrong.

VIII. CONCLUSION

The Commission's decision here will have a powerful impact on the shape of the advanced services marketplace in Wisconsin. Refusal to unbundle Project Pronto will lead to a cable modem provider/Ameritech duopoly. Innovation will suffer and prices will inflate. Sprint explained here and in its Initial Brief that the law requires advanced services to be unbundled. Ameritech should not be allowed to hide behind a FCC decision that waived certain ownership restrictions for advanced services equipment only and that explicitly stated that the FCC made no judgment on whether Ameritech's Broadband Service complied with Section 251(c) of the Act.

The packet switching criteria from Rule 51.319(c)(4) are all satisfied. Thus, Ameritech must make the packet switching network available to CLECs on an unbundled basis. If the Commission determines that one or more of the packet switching conditions are not satisfied, then the CLECs have explained why they are impaired from offering the services that they seek to offer within the meaning of Rule 51.317(b). Finally, the plug-in cards that the CLECs seek to virtually collocate satisfy all relevant legal criteria.

While Ameritech freely admits that it will unbundle the voice portions of Project Pronto, it has employed tortured linguistics and concocted multiple legal arguments to discourage the Commission from promoting competition in the advanced services market. The CLECs want nothing more than a fair playing field to compete. The playing field should not differ because the incumbent's network carries data packets rather than voice phone calls. It is all the same in this new world of converged networks. The Commission has the power to even the playing field and let CLEC innovation and skill benefit the consumers of Wisconsin.

Respectfully submitted,

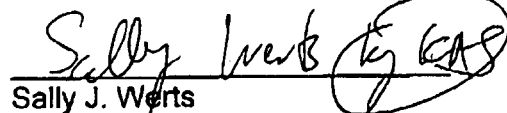
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2001, copies of the foregoing were sent to the following persons on the attached list via U.S. Mail.



Sally J. Werts